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BY THE U.S. GENERAL ACCOUNTING OFFICE

Report To The Chairman, Subcommittee On  
Environment, Energy, And Natural Resources  
Committee On Government Operations  
House of Representatives

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## Surface Coal Mining Operations In Two Oklahoma Counties Raise Questions About Prime Farmland Reclamation And Bond Adequacy

The Surface Mining Control and Reclamation Act of 1977 allows prime farmland to be mined but requires the coal operator to reclaim it according to special reclamation standards. To be considered prime farmland, the soil must meet the Secretary of Agriculture's definition of prime soil and have historically been used for intensive agricultural purposes. In Oklahoma, the historical-use provision has generally been applied to lands that have been used for cropland for 5 of the preceding 10 years.

GAO's review of mining activities in two Oklahoma counties showed that the land comprising 54 of the 58 mine permits issued since the act's passage contained some prime soil. None, however, required reclamation to prime farmland standards because landowners signed letters stating that the land had not been farmed for crops for five of the preceding 10 years.

GAO also found that numerous sites in the two counties were abandoned by mining companies after the act was passed. Since abandonment, no reclamation has occurred on most of these sites. The Department of the Interior's Office of Surface Mining questions whether the bonds on the unreclaimed sites, if collected, will be adequate to do the necessary reclamation. Oklahoma's Department of Mines has taken action to increase bond amounts on newly-issued permits and on some older permitted areas in order to prevent future reclamation problems.



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UNITED STATES GENERAL ACCOUNTING OFFICE  
WASHINGTON, D.C. 20548

RESOURCES, COMMUNITY,  
AND ECONOMIC DEVELOPMENT  
DIVISION

B-219275

The Honorable Mike Synar  
Chairman, Subcommittee on Environment,  
Energy, and Natural Resources  
Committee on Government Operations  
House of Representatives

Dear Mr. Chairman:

On August 10, 1984, you requested that we provide information on two issues concerning enforcement of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Specifically, you requested that we review the (1) bonding system for reclamation of strip-mined land in Oklahoma and in other selected states and (2) issuance of permits by states to operators or related operators who have violated the strip mine law. The second part of your request was completed with testimony that we presented at the Subcommittee's March 21, 1985, hearing on the issue.

This report, based on an April 26, 1985, briefing we gave your office, addresses your concerns about the bonding system for reclamation of strip-mined land in Oklahoma and the reclamation of prime farmland. The briefing was based on our analysis of 58 coal mining permits in Okmulgee and Muskogee Counties in Oklahoma.

The two major issues you requested that we address related to whether mined farmland was being reclaimed to its original status and whether the amount of the performance bonds was sufficient to cover reclamation costs should the operator fail to reclaim the land. Regarding the first issue, SMCRA allows prime farmland to be mined but requires the coal operator to reclaim it according to special reclamation standards. To be considered prime farmland, the soil must meet the Secretary of Agriculture's definition of prime soil and have historically been used for intensive agricultural purposes, as defined by federal regulation. In Oklahoma, the historical-use provision has generally been applied as lands that have been cropped (used for cropland) for 5 of the preceding 10 years.

We found that:

- The land comprising 54 of the 58 mine permits issued since the act's passage contain some prime soil. None of this land, however, was permitted as prime farmland because, on the basis of landowner statements, farming had not occurred in 5 of the preceding 10 years.
- The cropping history records needed for us to independently determine whether the mined land should have been reclaimed as prime farmland were not available for the majority of the 58 permits that we reviewed. In 3 of the 58 cases, records were available showing that the land had been cropped in 5 of the preceding 10 years and was, therefore, prime farmland.
- The state official responsible for determining the validity of the permit's prime farmland information told us that the state traditionally did not attempt to verify the landowner statements either by reviewing local cropping history records or by visiting the landowner because to do so was too time-consuming.

On the bond adequacy issue, SMCRA requires that the bond amount be sufficient to guarantee that reclamation operations will be satisfactorily completed according to the regulatory performance standards and the approved permit. We found that:

- In the two counties that we reviewed, 19 abandoned sites have been involved in bond forfeiture proceedings since SMCRA. Of these sites, 7 have been reclaimed; no reclamation has occurred on the remaining 12. Department of the Interior's Office of Surface Mining Reclamation and Enforcement (OSM) officials question whether the bonds on the unreclaimed sites, if collected, will be adequate to do the necessary reclamation.
- The adequacy of bond amounts for the 248 permitted areas in the state that have not been abandoned is not known. However, the Oklahoma Department of Mines (ODOM) is taking action to increase bond amounts on newly issued permits and on some older permitted areas in order to prevent future reclamation problems.

The following sections provide additional information on these two issues and detail the results of our work related to three other issues about which you expressed concern: reclamation procedures after bond forfeiture, bond releases, and recent actions taken by OSM and ODOM to improve the reclamation program.

The information was obtained largely from interviews with federal and state officials who were most directly involved with bonding and reclamation of strip-mined land and from a detailed review of the OSM and ODOM records for areas permitted in Okmulgee and Muskogee Counties. We obtained additional information during interviews with Department of Agriculture Soil Conservation Service (SCS) officials, surety company officials, landowners, and the largest active coal mine operator in Okmulgee County. (The scope and methodology for this study are explained in detail in app. I.)

Because our review was limited to mining activities in two counties, we cannot project the results to the entire state or to other states. At your request, we are currently reviewing the same issues discussed in this report in other states.

#### BACKGROUND ON RECLAMATION AND BONDING REQUIREMENTS

SMCRA (Public Law 95-87) established (1) a framework for nationwide regulation of coal mining and reclamation operations occurring after August 3, 1977--the date of the act's passage-- and (2) the OSM within the Department of the Interior to administer the programs for controlling surface coal mining operations, which are required by the act. It specified that because of the diversity in terrain, climate, and other physical conditions, the primary regulatory responsibility for surface mining and reclamation should rest with the states.

If a state wanted to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations, SMCRA required it to submit a plan for a permanent program to the Secretary of the Interior that demonstrated that the state had the capability to carry out the provisions of the act. Once a state's permanent program was approved, OSM's role became one of oversight, ensuring that the act's requirements were met.

OSM conditionally approved Oklahoma's regulatory program on January 19, 1981. However, a district court injunction barred enforcement of the approved program until the injunction was lifted on July 20, 1981. All permits issued by ODOM before July 20, 1981, were defined by OSM and ODOM as interim permits. During the interim period, all mining permits were required to comply with the interim regulatory reclamation standards outlined in SMCRA (title V, sec. 502). Although this section contained numerous reclamation standards, it did not require a performance bond to ensure reclamation. Oklahoma, however, still required such bonds under the Oklahoma Mining Lands Reclamation Act of 1971. Performance bonds under the state law ranged from \$350 to \$650 per acre.

The bond release procedures in effect during the interim period were also controlled by the existing state law (i.e., an 80-percent release upon satisfactory completion of grading). Effective October 1, 1980, the release procedures were changed to allow a 60-percent release upon completion of grading and the additional 40-percent release within 2 years after vegetation was established, as determined by ODOM. Penalty for failure to reclaim was also forfeiture of the bond and denial of a new mining permit.

All new permits issued after July 20, 1981, were, according to OSM officials, supposed to meet both the permanent program reclamation standards and bonding requirements outlined in SMCRA. However, according to OSM, approximately 45 of these permits did not meet the bonding requirements of the approved state permanent regulatory program when issued. These permits, dating from July 21, 1981, to March 19, 1982, are called transition period permits. The permits issued after March 19, 1982, are, for reporting purposes, defined as permanent program permits.

The permanent program requirements for reclamation and bonding are much more stringent than those of the interim period. Key requirements include (1) separating soil layers and preserving and replacing topsoil, (2) reclaiming as contemporaneously as practicable with strip-mining, (3) minimizing disturbance to hydrologic balance and to water quality and quantity, (4) establishing a diverse, effective, and permanent vegetative cover at least equal in extent of covering to the natural vegetation of the area, (5) restoring the land to a condition capable of supporting the uses that it was capable of supporting before mining or higher or better uses, and (6) posting of a performance bond of no less than \$10,000 per permit in the event of failure to complete the reclamation plan.

Bond releases are subject to the following schedule:

1. Release of up to 60 percent of the total bond amount upon completion of backfilling and grading on an increment or permit area.
2. Release of an additional amount up to 25 percent of the total bond amount upon revegetation of an increment or permit area.
3. Release of the remaining portion of the total performance bond on the increment or permit area after all of the reclamation standards were satisfied.

Each release is subject to ODOM approval. Bond forfeiture proceedings can be undertaken by the regulatory authority if the permittee fails to follow the approved mining and reclamation plan.

PRIME FARMLAND RECLAMATION

SMCRA states that the term "prime farmland" shall (1) have the same meaning as that prescribed by the Secretary of Agriculture on the basis of such factors as moisture availability, temperature regime, chemical balance, permeability, surface layer composition, susceptibility to flooding, and erosion characteristics; and (2) historically have been used for intensive agricultural purposes. Lands fitting this definition are required by the act to meet special reclamation standards designed to further ensure that the land is restored to a condition capable of supporting the use that it was capable of supporting before mining.

The OSM regulations, which implement the provisions of SMCRA, define the historical-use provision as follows:

". . . (a) lands that have been used for cropland for any 5 years or more out of the 10 years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease or option the conduct of surface coal mining and reclamation operations; (b) lands that the regulatory authority determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific 5-years-in-10 criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or (c) lands that would likely have been used as cropland for any 5 out of the last 10 years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land."

According to SCS officials, for the two counties that we reviewed, over half of the acreage permitted--3,060 acres out of 5,836 acres covered by 54 of the 58 permits--met the first part of the prime farmland definition. That is, they contained the physical and chemical properties of prime soil as defined by the Secretary of Agriculture. However, on the basis of cropping history waiver letters signed by the landowners stating that the land had not been cropped for 5 of the preceding 10 years, ODOM did not permit any of this land as prime farmland.

According to both OSM and ODOM officials, no source other than the landowner exists from which to obtain and verify the

10-year cropping history required by federal regulations. Furthermore, the OSM Western Technical Center senior project manager responsible for conducting the annual oversight evaluation of the state's permitting process said that landowners are an unreliable source from which to obtain cropping history information. He said that ownership may change and that owners are motivated by the money obtained from royalties rather than by concerns about the future productivity of the land. Other landowners, he maintains, simply do not understand the consequences of signing the waiver letters (i.e., that the reclaimed land will not be as productive as before mining occurred).

We could not independently determine whether the landowners were correctly stating that the land had not been cropped in 5 of the preceding 10 years. Although cropping history records of the Department of Agriculture's Agricultural Stabilization and Conservation Service (ASCS) are not generally maintained for more than 3 years, ASCS had maintained a history for 3 of the 58 cases that showed that the land met the requirements of prime farmland. However, this information was not, according to ODOM records, obtained and used by ODOM to verify the cropping history letters signed by the landowners.

The ODOM agronomist responsible for determining the validity of the permit's prime farmland information told us that the state traditionally did not attempt to verify the landowner statements either by reviewing local cropping history records or by visiting the landowner because it was too time-consuming. She also acknowledged that, although the historical-use definition provides three criteria, the 5-year-in-10 criterion has been the only one applied in Oklahoma. The last two criteria, she maintains, require consideration of factors even more difficult to obtain than the 10-year cropping history.

Our interviews with eight landowners who had signed waiver letters indicated that, in at least three cases, the landowner did not understand the significance of the waiver letters. As an illustration, one of these landowners said he was shocked to find out that, after mining, his land would not grow oats--previously a productive crop for him. Of the remaining five landowners,

--one did not recall signing a waiver letter but was not upset with the reclamation that had been done;

--three, who remembered signing letters, said that they planned to use the land as pasture after reclamation and were not concerned with crop productivity; and

--one said that he had farmed the land before mining, but because he needed the royalty money, signed the negative cropping history letter.

The local SCS officials we interviewed emphasized that in order to restore prime soils, special measures must be taken before mining to separate and preserve the natural soil horizons. They contend that if these special measures are not taken before mining occurs, prime soil cannot be restored afterwards.

The ODOM agronomist agreed with the views of the SCS officials and said she was concerned about the reclamation of prime soils in the state. To address her concerns she said she had arranged a meeting among ODOM, OSM, and SCS officials during February 1985 to discuss the issue of prime soil reclamation. The general conclusion among the parties, she said, was that the current level of reclaiming prime soils to meet just pastureland requirements (top soil only) would not return either the capability or the productive potential of the pre-mined soils. She said that the parties agreed during the meeting that an advisory group should be established to assist ODOM in the development and implementation of criteria or guidelines to resolve these issues. As of July 1985, this advisory group had not been established.

#### ADEQUACY OF BONDS TO ENSURE RECLAMATION

OSM officials question the adequacy of bond amounts for a number of mines permitted since SMCRA. Performance bonds, designed to provide insurance for surface coal mining and reclamation activities, were required by the Oklahoma Mining Land Reclamation Act of 1971 for coal mining areas in the state. Bond amounts and the method for calculating bonds have changed several times since 1971, with each change resulting in an increased average dollar amount per acre for new permits issued.

#### Abandoned sites in the two counties

According to ODOM records, 87 Oklahoma permits have been involved in forfeiture proceedings since SMCRA--80 from the interim period and 7 from the transition period. Of the 87, 22 were for areas permitted in Okmulgee and Muskogee Counties--21 from the interim period and 1 from the transition period. The 22 permits involve 19 abandoned sites, each bonded at \$1,000 per acre.

According to ODOM records, 7 of the 19 sites were adequately reclaimed by the surety company holding the bond.<sup>1</sup> ODOM officials said that since the surety company does not usually opt to do the reclamation unless it believes the bond is

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<sup>1</sup>During forfeiture proceedings, the surety company has the option of doing the reclamation or turning the money over to the regulatory authority.

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adequate, the bond amount was probably adequate in these instances.

For the remaining 12 sites--each abandoned before March 1983--ODOM has been successful in collecting the bond money for only one of them, and it has not been reclaimed. According to ODOM records, the bond money collected for this site totals \$45,000. A bid was solicited and a contract let for that amount. However, ODOM subsequently cancelled the contract after the contractor failed to reclaim the site. ODOM officials speculate that the contractor failed to perform because he realized the reclamation costs would exceed the bond amount available. In the meantime, ODOM has not been successful in getting the site reclaimed. According to ODOM records, the lowest bid received following the contract cancellation has been \$141,154.

The adequacy of the bond money for the remaining 11 abandoned sites is not known since ODOM has not been successful in collecting the funds. Although the bond money has not been collected, OSM officials question the adequacy of the \$1,000-per-acre bond on these and other interim-period sites bonded at the same level. To support their doubts they point to the Oklahoma Conservation Commission contracting costs, ranging from \$5,000 to \$10,000 per acre, for reclaiming the lands abandoned before SMCRA. The discussion on page 10 addresses the complexities involved in collecting the bond money for the 11 sites.

#### Non-abandoned permit areas

It is too early to tell whether the bond amounts are adequate for the 248 permitted areas in the state that have not been abandoned, because there have been no forfeitures on areas permitted under the permanent program. However, the adequacy of bond amounts in Oklahoma has been questioned by OSM in each of its oversight reviews of the state's regulatory program. Specifically, in its April 1, 1982 through April 30, 1983, annual oversight review, OSM found that

"The ODOM approved permit applications do not contain detailed estimates of costs of reclamation. Most permits issued by the ODOM have required a bond of \$1,000/acre, a cost grossly inadequate for third party reclamation in the event of bond forfeiture."

And during the second oversight evaluation of Oklahoma's regulatory program conducted by OSM during the weeks of December 4, 1983 and January 29, 1984, OSM found that

". . . bond amounts for most mining operations in Oklahoma are too low to cover the costs of third party reclamation in the event of forfeiture."

In response to the continuing OSM criticism, ODOM revised its bonding techniques on several occasions. The revised techniques applied only to new permits issued and did not affect bond amounts on previously issued permits. The most recent change, made in November 1984, has resulted in the average bond amount per acre being increased to \$2,495, ranging from a low of \$1,393 an acre on a 332-acre site to a high of \$5,431 an acre on a 14-acre site. This latter method, also known as the "worst case" method, is currently in effect and, according to the OSM Western Technical Center representative working with the state, is one of the best in existence. As of April 5, 1985, four permits had been issued using this method. Bonds under the new method are no longer calculated using a set dollar amount per acre (such as \$1,000 per acre). Rather, amounts are estimated on the basis of what it would cost a third party to bring in equipment and reclaim the site, much like that of a construction project.

However, as mentioned earlier, ODOM's revised bonding techniques over the years did not affect bond amounts on previously issued permits--an issue of great concern to OSM. ODOM officials, on the other hand, question the feasibility of increasing bond amounts, particularly when mining has been completed and reclamation begun. Rather than requiring the company to post additional bond on the previously issued permits, ODOM has selected a different approach for ensuring bond adequacy. This approach was described in ODOM's first 3-month report to OSM as follows:

" . . . if it is found that there is not an adequate bond and if the area is ready for a bond release we may reduce the amount to be released from the maximum allowable, thus increasing the amount of bond held by the state without creating additional financial burdens on the mining company."

This means that the reclamation on a particular segment may be complete and adequate, but the bond is not released which, in effect, increases the bond amount on the remaining permit area.

The surety companies and the mine operator that we interviewed expressed concern about ODOM's new approach toward ensuring bond adequacy. Specifically, these officials stated that ODOM's new policy of not approving bond releases in order to ensure future bond adequacy delays bond releases and creates financial hardships for mine operators. The surety companies told us that timely bond releases must be obtained by mine operators in order to free the commitment of their net worth so that it can be used to obtain bonding for the next permit. Bonding companies require a mine operator to have uncommitted assets (collateral) of three to five times a bond's face value. Mining and bonding company officials state that this situation

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has resulted in a number of mine operators going bankrupt or leaving the industry. Bonding company officials told us that they are reluctant to bond coal operators in this environment. One company has ceased bonding coal mining operations and another is not accepting new customers.

#### RECLAMATION AFTER BOND FORFEITURE

One of the stated purposes of SMCRA is to ensure that procedures are adequate to reclaim surface areas as contemporaneously as practicable with the surface mining operations. Reclamation of the 19 abandoned sites in the two counties that we reviewed has either been slow or lacking altogether. Since abandonment, no reclamation has occurred on 12 of the 19 sites; complete reclamation was performed by the responsible surety company on the remaining 7 sites. (Reclamation of these sites was discussed on p. 8). Of the 12 currently unreclaimed sites, one was abandoned in 1979, one in 1980, two in 1981, one in 1982, and six in 1983. The time of abandonment for the remaining site could not be determined from the records reviewed.

According to ODOM officials, many reasons account for the lack of reclamation on the 12 sites. First, four of the sites were bonded by letters of credit with expiration dates. In each of these cases, ODOM allowed the letters of credit--totalling \$425,300--to expire. ODOM has forwarded these cases to the state attorney general's office for collection, but according to the attorney assigned to the cases, the likelihood of recovering any of the money is slim.

Bond forfeiture is in progress for another three cases, involving \$164,100 in bond money. These cases are with the state attorney general's office for collection. However, as above, the attorney from this office assigned to the cases is not optimistic that the money will be collected. She said that none of the cases had been forwarded to her by ODOM before December 1984, although the sites had been abandoned since at least March 1983. When we asked why it had taken ODOM until December 1984 to take action on these cases, the ODOM attorney replied that he was not aware that there was a problem with unreclaimed abandoned sites until that time. He was hired by ODOM in October 1983.

ODOM has sent bond-forfeiture letters to the surety companies bonding two additional sites but has been unsuccessful in collecting the money, totalling \$23,538. A surety company official told us that contracts had been awarded to have the reclamation done on these two sites, but the OSM inspector assigned to these cases said that no reclamation had occurred on either of them.

In another instance, discussed on page 8, the bond money was collected but no reclamation has occurred. According to ODOM officials, the \$45,000 collected for this site is currently in the Oklahoma state treasury.

In one of the two remaining cases, the surety company notified ODOM that it intended to cancel the bond since the coal company involved was too risky to continue bonding. The notification letter was written before the site was abandoned. However, rather than responding to the cancellation letter, the ODOM permitting officer said that ODOM assumed that the surety company could not act unilaterally. Now it is up to the courts to decide which party is right, ODOM or the surety company. If ODOM loses, the bond money involved that would be forfeited, according to ODOM records, totals \$16,000.

In the last case, the bond money posted by the coal operator covered three permitted areas--two in McIntosh County and one in Muskogee County. When the state attorney general's office tried to collect the bond money in 1980, the court dismissed the case without prejudice because ODOM could not show the link between the bond amount and each of the permitted areas. Consequently, none of the \$117,000 bond money involved was collected.

ODOM officials acknowledge that most of the responsibility for ensuring reclamation of bond forfeiture sites is theirs. The role of other government agencies in doing reclamation is limited, according to the officials. Agencies with some involvement are listed below, with a brief description of their areas of responsibility.

1. Oklahoma attorney general's office: Attorneys are assigned to individual bond-collection cases.
2. Oklahoma Treasury Department: Responsible for management of collected bond-forfeiture money. (Interest on this money goes to the state treasury and not to ODOM, according to ODOM officials.)
3. SCS: At the request of ODOM, SCS may review the adequacy of reclamation on a previously abandoned site. However, SCS' services have not historically been requested for this purpose.
4. OSM: Since the partial takeover of the state's approved regulatory program in April 1984, OSM inspectors have been responsible for conducting reclamation adequacy inspections on previously abandoned sites.

## BOND RELEASES

SMCRA provides for release of a bond by the regulatory authority if the authority is satisfied that the reclamation covered by the bond has been accomplished. According to the ODOM bonding officer, as of March 1985, approximately 500 interim program and 50 permanent program bond releases were approved by ODOM since SMCRA. Of the combined total, 86 were releases made on 23 of the 58 permitted areas in Okmulgee and Muskogee counties. Sixty-seven of the 86 releases were partial and 19 were total.

To identify cases in which the landowner and/or other citizens complained about a bond release, we reviewed the available citizen complaint files for the two counties. SMCRA requires that, as part of any bond-release application, the applicant must give notice of his intent to seek release from the bond. If any persons believe that they might be adversely affected by release of the bond, they have the right to file written objections to the regulatory authority within 30 days.

Of the 20 complaints filed by landowners in Okmulgee and Muskogee counties that we reviewed, only one pertained to an improper or inappropriate bond release. However, since the complaint file has only been maintained by ODOM since January 1983, our review could not cover the approximately 350 releases made before that time. Of the 20 files provided to us by ODOM officials, the majority dealt with damage to surrounding landowners' property caused by blasting. Others concerned damage to ponds and a water supply system caused by the failure to contain sludge. Two concerned reclamation, but the only complaint concerning bond release was withdrawn once the individual was informed that it was a partial release. The files indicate that mine inspectors investigated these complaints but no corrective actions were indicated.

OSM has also been concerned with the appropriateness of bond releases approved by ODOM. This concern, in part, led to the OSM takeover of the inspection and enforcement aspects of the state's regulatory program in April 1984. As a condition for reassuming this regulatory responsibility, OSM required ODOM to reevaluate bond release actions since July 20, 1981, in order to identify any deficiencies or problems with these releases. To respond to this requirement, ODOM agreed to randomly select and review 50 of the approximately 500 interim program and the 50 permanent program bond releases that it had approved.

According to the ODOM bonding officer, once the random selection is made, ODOM inspectors will be sent out to locate the areas released, take photographs, and assess what needs to be done to improve releases of bonds. However, he said that he questions the feasibility of the OSM requirement, since the

releases approved by ODOM, particularly on interim-period mine sites, were done so haphazardly that it will be difficult to locate the exact area on which a release was made.

ACTIONS TAKEN TO  
PREVENT FUTURE PROBLEMS

Both OSM and ODOM have taken action to prevent future reclamation problems. First, as mentioned on page 9, ODOM is delaying release of bonds and has adopted a new bonding method that has increased bond amounts from a flat rate of \$1,000 per acre to an average of over \$2,495 per acre. Although it is too early to tell whether the method is effective, both OSM and ODOM officials state that the increased bond amounts should be sufficient to ensure that newly-mined land will be reclaimed. They acknowledge, however, that the key to adequate reclamation is enforcement.

SMCRA requires the regulatory authority to conduct unscheduled inspections, averaging at least one partial inspection per month and one complete inspection per calendar quarter, for the surface coal mining and reclamation operation covered by each permit. If the inspector notices a violation of the approved permit, the state regulations require the inspector to take whatever steps are necessary to abate the problem, such as ordering the operator to cease operations. OSM and ODOM officials acknowledge that unless inspectors cite reclamation plan violations as they occur and order operators to cease operations immediately if the violations are not corrected, future reclamation problems could occur. Their job, they agree, is to ensure that the operator does not get so far ahead of the approved reclamation plan that the bond is not adequate to do the reclamation in the event of forfeiture.

Second, according to the ODOM attorney, ODOM began having the banks assign all applicable certificates of deposit over to it in late 1983. By so doing, the bank acknowledges that the money belongs to the state in the event of forfeiture. The attorney maintains that this prevents the bank from having first lien on the money.

Third, to ensure that future reclamation is adequate before a bond is released, OSM officials said that their inspectors have been providing on-the-job reclamation training to ODOM inspectors. This training consists of having state inspectors accompany OSM inspectors on routine inspections. In theory, by demonstrating to ODOM what OSM considers to be adequate reclamation, the state inspectors will know in the future when to take strong, effective enforcement action against operators violating approved reclamation plans.

OSM now operates parts of  
Oklahoma's bonding program

As part of its oversight responsibility, OSM conducts annual reviews of each state's approved regulatory program. In Oklahoma, two of these reviews have been conducted. The first covered the period from April 1, 1982 through April 30, 1983; the second covered May 1, 1983 through March 31, 1984. These reviews cited many deficiencies in the state's program, among them insufficient bond amounts and mining under permits that had not been updated to permanent program standards.

According to OSM officials, while the findings of the reviews were discussed with ODOM, no significant progress was made to correct them. As a result of these and other problems, the director of OSM took over the inspection and enforcement activities of the state's program effective April 30, 1984. The state, however, maintained the responsibility for determining bond amounts, making bond adjustments, and processing bond releases.

OSM's only responsibility with respect to bonding resulting from the takeover action is that, before a bond can be released by the state, OSM must conduct the bond-release inspection and approve the reclamation. According to the ODOM permit officer, OSM has approved 13 bond releases since April 30, 1984. Each of the 13 releases was a partial bond release.

Other actions taken by OSM since April 1984 that affect the Oklahoma bonding program include requiring ODOM to

- reevaluate existing permits, including bond adequacy (ODOM has withheld bond releases in order to ensure bond adequacy; see p. 9);
- reevaluate bond-release actions since July 20, 1981 (ODOM agreed to reevaluate some releases; see p. 12); and
- notify operators of additional permit application and/or bond information requirements. ODOM's response to this requirement was to draft a permit application and instruction package that should, according to ODOM officials, help the miner and consultants know what information must be included in the permit applications and what information is needed to calculate and set bonds. This draft, according to the ODOM bonding officer, was approved in the fall of 1984 and sent to all coal operators in the state at that time.

In addition, since the partial takeover in April 1984, OSM has provided technical assistance to the state in correcting

deficient permits, issuing new permits, making bond calculations, and making bond-release determinations. This technical assistance was provided by a Western Technical Center representative temporarily on loan to the state after the partial takeover. And, according to the ODOM deputy chief mine inspector, the assistance provided has been very beneficial.

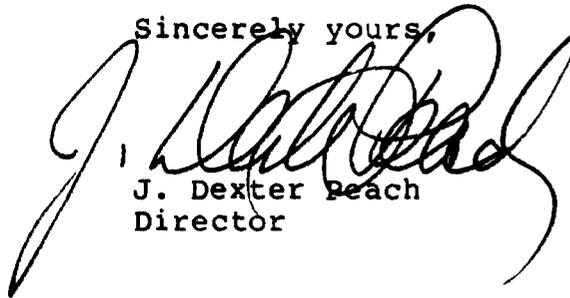
According to both OSM and ODOM officials, one of the most significant changes affecting the bonding program since the partial takeover has been the change in the bonding calculation method used by ODOM (i.e., from a certain dollar amount per acre to the third-party cost method). This method, according to both the OSM Western Technical Center representative and ODOM officials, should ensure that land mined today is reclaimed.

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We discussed the information obtained during our review with agency program officials and have included their comments where appropriate. However, we did not solicit official agency comments on a draft of this document.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of the report. At that time we will send copies to the Secretary of the Interior. Copies will also be made available to other interested parties upon request.

Sincerely yours,

A large, stylized handwritten signature in black ink, appearing to read 'J. Dexter Beach', is written over the typed name and title.

J. Dexter Beach  
Director



OBJECTIVES, SCOPE, AND METHODOLOGY

On August 10, 1984, the Chairman, Subcommittee on Environment, Energy, and Natural Resources, House Committee on Government Operations, requested that we provide information related to the reclamation of strip-mined land in Oklahoma. As agreed with the Chairman's office, we focused on the following issues:

- Is prime farmland being returned to its original state?
- Are bonds adequate to ensure reclamation?
- How is reclamation ensured after forfeiture?
- Are bond releases proper?
- What is being done to prevent future reclamation problems? How has the partial Office of Surface Mining (OSM) takeover affected Oklahoma's bonding program?

To gain an overall understanding of these issues, we reviewed federal and state law and rules and regulations pertaining to bonding and reclamation. To see how the law, rules, and regulations were carried out in the state, we reviewed the 58 coal mining permits issued since SMCRA in 2 of the 11 counties that produced coal in 1983--Muskogee and Okmulgee.

Muskogee and Okmulgee Counties were selected because, according to OSM and Oklahoma Department of Mines (ODOM) officials, they were representative of the other coal-producing counties in the state and were geographically close to both the OSM and ODOM state offices. These counties represent approximately 12 percent of the coal produced in Oklahoma during 1983 (see app. II), 16 percent of all Oklahoma bond releases, and 25 percent of all Oklahoma permits involved in forfeiture proceedings since the Surface Mining Control and Reclamation Act of 1977 (SMCRA) (see app. III). However, because our review was limited to two counties, the results cannot be projected statewide.

To obtain specific information about mining activities in the two counties as well as general information about mining in the state, we interviewed officials from OSM at the following locations:

<u>OSM Office</u>	<u>Location</u>
Headquarters	Washington, D.C.
Tulsa Field Office	Tulsa, Okla.
Muskogee Suboffice	Muskogee, Okla.
Solicitor's Office	Washington, D.C.
	Tulsa, Okla.
Western Technical Center	Denver, Colo.

We also interviewed officials from the state regulatory authority, ODOM. The officials interviewed were those most directly involved with bonding and reclamation of strip-mined land.

To supplement our work on the prime farmland issue, we interviewed the U.S. Department of Agriculture (USDA) Soil Conservation Service (SCS) representatives in Muskogee and Okmulgee counties and reviewed the cropping history records maintained by USDA's Agricultural Stabilization and Conservation Service (ASCS) for the two counties. We also obtained and studied the SCS maps for the two counties. Appendix IV shows the percentage of prime farmland for each coal-producing county.

To address the issues of bond adequacy, reclamation after bond forfeiture, and appropriateness of bond releases, we supplemented our OSM and ODOM interviews by reviewing the permits and bond records maintained by the two organizations for Muskogee and Okmulgee counties. We also interviewed the largest active mine operator in Okmulgee County, eight landowners, and representatives from four surety companies. The surety companies we contacted were Tri-State Insurance Company, Mid-Continent Surety, and Oklahoma Surety Company--all located in Tulsa, Oklahoma--and the Union Bank and Trust Company in Oklahoma City. In addition, we contacted the Oklahoma attorney general's office to discuss bond forfeiture cases forwarded by ODOM for collection.

The issue of what is being done to prevent future problems was developed primarily through interviews with the OSM and ODOM officials listed above. Similarly, the issue of what has happened to Oklahoma's bonding program since the partial OSM takeover was developed primarily through interviews with the OSM officials most directly involved with this aspect of the state's regulatory program. We also reviewed written documentation to support the actions taken by OSM and ODOM with respect to these two issues.

Furthermore, to obtain statistics on coal mining activity in the state since SMCRA, we reviewed ODOM's master permit list and other OSM and ODOM permit and bond records. OSM and ODOM officials acknowledge that the statistics are not completely accurate, primarily because of poor record-keeping during the interim period. However, ODOM officials told us that the statistics are representative of mining activity in the state since SMCRA (see apps. V and VI).

We also interviewed officials from the Mining and Reclamation Council of America (a trade association) to obtain their views about bonding and reclamation in general.

We made our review from January through April 1985. We discussed the information we obtained during this review with agency program officials and have included their comments where appropriate. However, in accordance with the requester's wishes, we did not solicit official agency comments on a draft of this report. Our work was performed in accordance with generally accepted government auditing standards.

COAL PRODUCTION IN OKLAHOMA DURING 1983  
(by county)

<u>County</u>	<u>Tons</u>	<u>Percentage</u>
Craig	841,372	23
Rogers	649,353	18
Wagoner	431,134	12
LeFlore	426,875	12
Haskell	354,510	10
McIntosh	244,974	7
Muskogee	219,167	6
Okmulgee	204,841	6
Latimer	190,292	5
Coal	47,482	1
Pittsburg	<u>25,890</u>	<u>-</u>
Total	<u>3,635,890<sup>a</sup></u>	<u>100</u>

Source: 1983 ODOM Annual Report.

<sup>a</sup>The 1983 ODOM annual report published this figure as 3,685,890, but the correct total is as indicated. We did not attempt to identify the cause of the discrepancy.

PERMITS INVOLVED IN FORFEITURE PROCEEDINGS  
(by county)

<u>County</u>	<u>Number of companies</u>	<u>Permits involved</u>	<u>Acres involved</u>	<u>Acres reclaimed since abandonment</u>
Craig	5	19	3,541	442
Haskell	8	22	1,889	0
Latimer	1	1	42	0
LeFlore	1	1	150	0
McIntosh	4	4	190	0
Muskogee	4	6	386	120
Nowata	1	1	24	0
Okmulgee	5	16	1,084	497
Pittsburg	1	1	38	0
Rogers	<u>8</u>	<u>16</u>	<u>799<sup>a</sup></u>	<u>376</u>
Total	<u>38</u>	<u>87</u>	<u>8,143</u>	<u>1,435</u>

<sup>a</sup>Includes acreage for two areas for which the permit was missing.

Source: ODOM and OSM records.

PERCENTAGE OF PRIME FARMLAND OF  
EACH OKLAHOMA COAL-PRODUCING COUNTY

<u>County</u>	<u>Percentage of</u> <u>prime farmland</u>
Atoka	26
Coal	32
Craig	49
Haskell	28
Latimer	16
LeFlore	27
McIntosh	31
Muskogee	55
Nowata	50
Okmulgee	40
Pittsburg	17
Rogers	54
Tulsa	38
Wagoner	57

Source: SCS National Farmlands Inventory, May 1984.

MINING STATUS OF PERMITS ISSUED IN OKLAHOMA SINCE SMCRA  
(figures as of April 1985)

<u>Status</u>	<u>Interim</u>	<u>Transition</u>	<u>Permanent program</u>	<u>Total</u>
Inactive	1	0	2	3
Active	1	6	41	48
In reclamation	150	32	15	197
Totally reclaimed by operator	8	0	0	8
Abandoned/bond forfeiture	80	7	0	87 <sup>a</sup>
Reclaimed	19	2		21
Unreclaimed	— 61	— 5	—	— 66
Total	<u>240</u>	<u>45</u>	<u>58</u>	<u>343</u>

<sup>a</sup>Acreage for 21 of these permits was subsequently reclaimed but the permits are counted here to reflect the magnitude of permits involved in forfeiture proceedings.

Source: ODOM and OSM records.

MINING STATUS OF PERMITS ISSUED SINCE SMCR  
IN MUSKOGEE AND OKMULGEE COUNTIES ONLY  
 (figures as of April 1985)

<u>Status</u>	<u>Interim</u>	<u>Transition</u>	<u>Permanent program</u>	<u>Total</u>
Inactive	0	0	0	
Active	0	0	4	4
In reclamation	24	6	2	32
Totally reclaimed by operator	0	0	0	
Abandoned/bond forfeiture	21	1	0	22 <sup>a</sup>
Reclaimed	9	0		9
Unreclaimed	12	1		13
Total	<u>45</u>	<u>7</u>	<u>6</u>	<u>58</u>

<sup>a</sup>Acreege for nine of these permits was subsequently reclaimed but the permits are counted here to reflect the magnitude of permits involved in forfeiture proceedings.

Source: ODOM and OSM records.